



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2004

Mr. Bret Jimerson  
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OR2004-9219

Dear Mr. Jimerson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 211803.

The Carroll Independent School District (the "district"), which you represent, received a request from the State Board for Educator Certification (the "SBEC") for information relating to a former employee of the district. You state that the district will release most of the requested information. You claim that the rest of the requested information is excepted from disclosure under section 552.135 of the Government Code. You also ask whether the district must release some of the remaining information to the SBEC under section 552.135(d). We have considered your arguments and have reviewed the information you submitted.

Initially, we must address the district's obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information;

(3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 provides that if a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information.

You inform us that the district received the present request for information on August 4, 2004. Although your request for this decision is dated August 19, 2004, the envelope in which it was submitted to this office is meter-marked August 20, 2004. The latter date was not within the ten-business-day period prescribed by section 552.301. *See Gov't Code* § 552.308(a).<sup>1</sup> The submitted information is therefore presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision* Nos. 630 at 3 (1994), 325 at 2 (1982). As the applicability of section 552.135 can provide a compelling reason for non-disclosure under section 552.302, we will address this exception.

We first note, however, that some of the submitted information is confidential under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA").<sup>2</sup> *See* 20 U.S.C. § 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See id.* § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). FERPA is incorporated into the Act

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<sup>1</sup>Section 552.308(a) provides that when the Act requires a request, notice, or other document to be submitted or otherwise given to a person within a specified time period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and (1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period or (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period.

<sup>2</sup>Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Gov't Code* § 552.101. This exception encompasses information that is made confidential by statute. Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See id.* §§ 552.007, .352; *Open Records Decision* No. 325 at 2 (1982).

by section 552.026, which provides that the Act “does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA].” Gov’t Code § 552.026. “Education records” under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

Generally, FERPA requires that information be withheld from the public only to the extent reasonable and necessary to avoid personally identifying a particular student. *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). We have marked information that identifies students of the district and a student’s parents. The district must not release the marked information unless it has authorization under FERPA to do so.

We note that a governmental body may treat a request for information by another governmental body such as the SBEC as a request for information under the Act. However, a governmental body that receives such a request is not required to do so. *See* Attorney General Opinion JM-119 at 2 (1983). A transfer of information between governmental bodies is not necessarily a release to the public for purposes of the Act. *See id.* For example, an official or employee of a governmental body who, in an official capacity, requests information held by another governmental body does not act as a member of the public in doing so. Thus, an official or employee of one governmental body may review records of another governmental body without implicating the Act’s prohibition of selective disclosure or its proscription of the release of confidential information. *See* Gov’t Code §§ 552.007, .352; Attorney General Opinion JM-119 at 2 (1983); Open Records Decision No. 468 at 4 (1987). An interagency transfer of information is prohibited, however, if an applicable confidentiality statute enumerates the specific entities to which information encompassed by the statute may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinions DM-353 at 4 n. 6 (1995), JM-590 (1986). In this instance, the applicable confidentiality statute is FERPA. FERPA authorizes the transfer of information to enumerated persons, agencies, and organizations for certain specified purposes. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.31. The SBEC is not one of the persons, agencies, or organizations to which the district may transfer information that is confidential under FERPA. Therefore, the marked information that is confidential under FERPA must not be released to the requestor.

Next, we address your arguments under section 552.135. This exception provides as follows:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature specifically limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See also id.* § 552.301(e)(1)(A). You have informed this office that the submitted information was provided to the district by district employees for the purpose of reporting possible violations of criminal, civil, and regulatory law. Specifically, you assert that the reported actions potentially concern criminal violations of assault, injury to a child, and abandoning or endangering a child. Based on your representations and our review of the submitted information, we find that you have sufficiently demonstrated that the conduct reported to the district by its employees concerns possible violations of civil, criminal, or regulatory law for purposes of section 552.135. We therefore conclude that the information that we have marked is excepted from public disclosure under section 552.135(b).

You also ask whether the district is required under section 552.135 to release the marked information to the SBEC as a "law enforcement agency." Section 552.135(d) provides that "[i]nformation excepted under [section 552.135(b)] may be made available to a law

enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.” *Id.* § 552.135(d). We note that the purpose of the SBEC is to regulate and oversee the certification, continuing education, and standards of conduct of public school educators. *See* Educ. Code § 21.0031(a); *see also id.* § 21.041(b) (enumerating rules SBEC is authorized to propose); Gov’t Code § 2054.352(a)(25) (referring to SBEC as “licensing entity”); 19 T.A.C. § 249.1 (summarizing SBEC’s statutory regulatory authority). We further note that the phrase “law enforcement agency” is commonly understood to mean an agency of the state or an agency of a political subdivision of the state that is authorized by law to employ peace officers. *See* Attorney General Opinion Nos. JC-0070 at 6 (1999) (addressing definition of “law enforcement agency” under Crim. Proc. Code art. 59.01(5)); *cf.* § Educ. Code § 22.082 (reflecting that SBEC is not considered to be law enforcement agency for purposes of access to criminal history record information). We find that the SBEC is not a “law enforcement agency” for the purposes of section 552.135(d) and thus has no right of access under this subsection to information that is protected by section 552.135. *See also* Gov’t Code § 311.011(a) (statutory phrases must be read in context and construed according to common usage); *Bouldin v. Bexar County Sheriff’s Civil Service Comm’n*, 12 S.W.3d 527, 529 (Tex. App.—San Antonio 1999) (words in statutes have their ordinary meaning unless they are defined by statute or connected and used with reference to particular trade or subject matter or are term of art); *cf.* MW-575 at 1 (1982) (Texas Department of Agriculture not law enforcement agency for purposes of statutory predecessor to Gov’t Code § 552.108, as its function is essentially regulatory in nature, even though it is charged with duty of enforcing its own statutes); Open Records Decision No. 199 (1978) (agency whose function is essentially regulatory in nature is not “law enforcement agency” for purposes of statutory predecessor to Gov’t Code § 552.108, even though agency is charged with duty of enforcing its own statute).

You also inform us, and the SBEC’s request itself states, that the SBEC requested the submitted information under section 249.14 of title 19 of the Texas Administrative Code.<sup>3</sup> Accordingly, we will consider whether this section permits the SBEC to obtain information that is otherwise protected by section 552.135. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure). Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving the SBEC. *See* 19 T.A.C. § 249.1. Section 249.14 provides in relevant part:

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<sup>3</sup>As previously noted, chapter 21 of the Education Code authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators. *See* Educ. Code § 21.031(a). Section 21.041 of the Education Code states that the SBEC may “provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code.” *Id.* § 21.041(b)(7). Section 21.041 also authorizes the SBEC to “adopt rules as necessary for its own procedures.” *Id.* § 21.041(a).

(a) Staff [of the SBEC] may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the board denying relief to or taking disciplinary action against the person or certificate.

...

(c) The executive director and staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify [SBEC] in writing . . . by filing a report with the executive director within seven calendar days of the date the person first obtains or has knowledge of information indicating any of the following circumstances:

(1) that an applicant for or a holder of a certificate has a reported criminal history;

(2) that a certificate holder was terminated from employment based on a determination that he or she committed any of the following acts:

(A) sexually or physically abused a minor or engaged in any other illegal conduct with a minor;

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position; or

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event, or;

(3) that a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (2) of this subsection.

...

(e) A report filed under subsection (d) of this section shall, at a minimum, summarize the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; and last known mailing address and home and daytime phone numbers. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.

19 T.A.C. § 249.14. We note that these regulations do not specifically require the person who makes the report prescribed by section 249.14(d) to disclose the identities of individuals who have provided information relating to the matter that is being reported. *See id.* § 249.14(e). Likewise, section 249.14 does not specifically authorize the SBEC to obtain the identities of such individuals. *Id.* In contrast, the legislative history of section 552.135 of the Act reflects that this exception was specifically intended to protect the identities of employees of school districts who provide information relating to alleged or suspected misconduct to administrators or internal investigators. *See* Hearing on H.B. 211 Before House Comm. on Public Education, 76<sup>th</sup> Leg., R.S. (April 12, 1999).

Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 249.14 generally allows the SBEC access to information relating to suspected misconduct on the part of an educator, section 552.135 specifically protects the identities of individuals who have provided such information to a school district. We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information that is excepted from disclosure under section 552.135 from the SBEC. *See also* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission). We also note once again that an interagency transfer of this information is not permissible where, as here, the applicable statute enumerates the specific entities to which information encompassed by the statute may be disclosed, and the enumerated entities do not include the requesting

governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinion No. GA-0055 (2003) (SBEC not entitled to access to teacher appraisal made confidential by Educ. Code § 21.355, where Educ. Code § 21.352 expressly authorized limited release of appraisals to other school districts in connection with teachers' employment applications).

In summary: (1) the district must not release the marked information that is confidential under FERPA; and (2) the district must withhold the information that we have marked under section 552.135. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

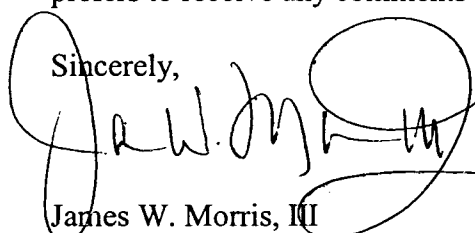
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).



Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
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Open Records Division

JWM/sdk

Ref: ID# 211803

Enc: Submitted documents

c: Mr. John S. Lopez  
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(w/o enclosures)